

IN THE MATTER OF:	)	Amendment No. 1 to Agreement
	)	
Lower Passaic River Study Area portion	)	
of the Diamond Alkali Superfund Site	)	U.S. EPA Region 2
	)	CERCLA Docket No. 02-2004-2011
	)	
In and About Essex, Hudson, Bergen and	)	
Passaic Counties, New Jersey	)	
	)	
Alcan Corporation, et al.	)	PROCEEDING UNDER SECTION
	)	122(h) OF CERCLA,
	)	42 U.S.C. §9622

## I. INTRODUCTION AND JURISDICTION

1. The Agreement, Index No. 02-2004-2011, was entered into between the United States Environmental Protection Agency ("EPA") and thirty-one Settling Parties, as set forth in Appendix A which became effective on June 22, 2004 ("original Agreement"). Through the original Agreement, the Settling Parties agreed to fund EPA's Future Response Costs for the Remedial Investigation/Feasibility Study portion of the Lower Passaic River Restoration Project up to \$10,000,000.00.
  
2. The original Agreement was issued pursuant to the authority vested in the Administrator of the EPA by Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h), which authority has been delegated to the Regional Administrators of the EPA and further redelegated to the Director of the Emergency and Remedial Response Division, Region II by EPA Delegation 14-4-D on November 23, 2004. The original Agreement was also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, was delegated to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice.
  
3. Paragraph 8 of the original Agreement acknowledged that additional persons or entities may be added to the original Agreement under terms agreed upon by EPA and the Settling Parties. Accordingly, this Amendment No. 1 to the original Agreement ("Amendment No. 1") is made and entered into by EPA and the Settling Parties for the purpose of adding the following additional Settling Parties: Chevron Environmental Management Company, for itself and on behalf of Texaco, Inc.; Elan Chemical Company; Givaudan Fragrances Corporation; Pharmacia Corporation (f/k/a

Monsanto Company) and Monsanto Company, by Monsanto Company, for itself and as attorney-in-fact for Pharmacia Corporation; Purdue Pharma Technologies, Inc.; Chemical Leaman Corp., including Quality Carriers Inc. and Quala Systems Inc.; The Stanley Works; Hexcel Corporation; Leemilt's Petroleum, Inc. (successor to Power Test of New Jersey, Inc.), on its behalf and on behalf of Power Test Realty Company Limited Partnership and Getty Properties Corp., the General Partner of Power Test Realty Company Limited Partnership; Vulcan Materials Company; American Ref-Fuel Company of Essex County; and DiLorenzo Properties Company on behalf of itself and the Goldman/Goldman/DiLorenzo partnerships. Each of these new Settling Parties consents to be bound to the terms and conditions of the original Agreement. The terms and conditions of the original Agreement are neither altered nor affected by Amendment No. 1 except as expressly provided in Section II below. All Settling Parties consent to enter into Amendment No. 1 and agree not to contest EPA's jurisdiction to enter into Amendment No. 1.

## **II. AMENDMENT**

### **4. The original Agreement is amended by the following:**

#### **a. The final sentence of Paragraph 4.i is replaced by the following:**

Through this Agreement the Settling Parties agree to fund EPA's Future Response Costs for the RI/FS portion of the Project up to \$10,000,000.00, unless EPA issues one or more Contingent Funding Demands, as defined in Paragraph 13 as amended by Paragraph 4.c. in this Amendment No. 1 below, in which case the Settling Parties agree to fund such Future Response Costs up to \$10,750,000.00.

#### **b. Paragraph 10.j is replaced by the following:**

"Non-Settling Parties" shall mean those responsible parties identified in EPA General Notice Letters for the Lower Passaic River Study Area that are not parties to the original Agreement or Amendment No. 1.

#### **c. The following sentence is added as the last sentence in Paragraph 13:**

"In the event EPA's use of the Diamond Alkali Superfund Site – Lower Passaic River Study Area Special Account results in there being unobligated funds in the amount of \$1,000,000.00 or less on or after April 1, 2006 and EPA determines that the amount remaining is an insufficient amount to complete the RI/FS portion of the Project, Settling Parties agree to make one or more additional payments for Future Response Costs up to a total of \$750,000.00, which amount shall be referred to as the "Contingent Funding Commitment," subject to the following provisions:

#### **(a) EPA shall present the Settling Parties with a written demand(s) for the**

payment of an additional amount up to \$750,000.00, including a description of the RI/FS activities that EPA expects to perform using the funds demanded (the "Contingent Funding Demand");

(b) the Settling Parties shall pay the amount specified in a Contingent Funding Demand by making payment within ninety (90) days of the Settling Parties' receipt of the Contingent Funding Demand to the EPA Account identified in Paragraph 12;

(c) although EPA may issue multiple Contingent Funding Demands, the total amount of all such demands shall not exceed the Contingent Funding Commitment;

(d) EPA will limit the amount of any Contingent Funding Demand to no more than the estimated amount of Future Response Costs in excess of \$10,000,000.00 that EPA believes to be necessary to complete the RI/FS portion of the Project, including reasonable contingencies; and

(e) if EPA incurs less than the amount paid by the Settling Parties in response to any and all Contingent Funding Demands, EPA will return the excess funds remaining in the Diamond Alkali Superfund Site-Lower Passaic River Study Area Special Account to the Settling Parties.

- d. The first two sentences at Paragraph 15 are replaced by the following sentences:

Settling Parties may not dispute any payment of Future Response Costs until EPA has incurred \$10,000,000.00, or such greater amount to include any and all payments made by Settling Parties in response to a Contingent Funding Demand. After EPA has incurred \$10,000,000.00, or such greater amount to include any and all payments made by Settling Parties in response to a Contingent Funding Demand, EPA will perform an accounting of all direct and indirect costs relating to Future Response Costs and provide Settling Parties with a "final" SCORPIOS Report supporting those costs."

- e. At Paragraph 24.g, the sum "\$10,000,000.00" is replaced by the sum \$10,750,000.00" in each of the four (4) instances that it appears in said Paragraph.

- f. Appendix A to the original Agreement shall include the following additional Settling Parties: Chevron Environmental Management Company for itself and on behalf of Texaco, Inc.; Elan Chemical Company; Givaudan Fragrances Corporation; Pharmacia Corporation (f/k/a Monsanto Company) and Monsanto Company, by Monsanto Company, for itself and as attorney-in-fact for Pharmacia Corporation; Purdue Pharma Technologies, Inc.; Chemical

Leaman Corp., including Quality Carriers Inc. and Quala Systems Inc.; The Stanley Works; Hexcel Corporation; Leemilt's Petroleum, Inc. (successor to Power Test of New Jersey, Inc.), on its behalf and on behalf of Power Test Realty Company Limited Partnership and Getty Properties Corp., the General Partner of Power Test Realty Company Limited Partnership; Vulcan Materials Company; American Ref-Fuel Company of Essex County; and DiLorenzo Properties Company on behalf of itself and the Goldman/Goldman/DiLorenzo Properties partnerships.

### **III. PUBLIC COMMENT**

5. This Amendment No. 1 to the original Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Amendment No. 1 if comments received disclose facts or considerations which indicate that this Amendment No. 1 is inappropriate, improper, or inadequate.

### **IV. ATTORNEY GENERAL APPROVAL**

6. The Attorney General, or his designee, has approved the settlement embodied in this Amendment No. 1 to the original Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

### **V. EFFECTIVE DATE**

7. The effective date of this Amendment No. 1 shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 5 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Amendment No. 1.

IT IS SO AGREED.

## **Appendix A - List of Settling Parties**

Alcan Company  
Alliance Chemical, Inc.  
Amerada Hess, on its own behalf and on behalf of Atlantic Richfield Company  
American Ref-Fuel Company of Essex County  
Ashland, Inc.  
BASF Corporation  
Benjamin Moore & Co .  
Celanese LTD  
Chemical Leaman Corp., including Quality Carriers Inc. and Quala Systems Inc.  
Chevron Environmental Management Company, for itself and on behalf of Texaco, Inc.  
Coltec Industries Inc.  
Curtiss-Wright Corp.  
DiLorenzo Properties Company on behalf of itself and the Goldman/Goldman/DiLorenzo partnerships  
E. I. du Pont de Nemours and Company  
Elan Chemical Company  
Essex Chemical Corp .  
Franklin-Burlington Plastics, Inc.  
Givaudan Fragrances Corporation  
Goody Products, Inc.  
Hexcel Corporation  
Leemilt's Petroleum, Inc. (successor to Power Test of New Jersey, Inc.), on its behalf and on behalf of Power Test Realty Company Limited Partnership and Getty Properties Corp., the General Partner of Power Test Realty Company Limited Partnership  
Lucent Technologies, Inc.  
Mallinckrodt, Inc.  
News America Incorporated  
NPEC, Inc.  
Occidental Chemical Corporation (as successor to Diamond Shamrock

Chemicals Company)

Otis Elevator Company

Pfizer Inc.

Pharmacia Corporation (f/k/a Monsanto Company) and Monsanto Company, by Monsanto Company, for itself and as attorney-in-fact for Pharmacia Corporation

PPG Industries, Inc.

PSE&G Co .

Purdue Pharma Technologies, Inc.

Reichhold Chemicals, Inc. (n/k/a Reichhold, Inc.)

Reilly Industries, Inc

RSR Corporation

Safety-Kleen Envirosystems Company

Teva Pharmaceuticals USA, Inc.

The Andrew Jergens Co.

The Sherwin Williams Company

The Stanley Works

Three County Volkswagen

Viacom, Inc

Vulcan Materials Company

For: U.S. Environmental Protection Agency

By:

Raymond Basso

William McCabe

Acting Director

Emergency and Remedial Response Division

USEPA Region II

Date

7/26/05

For: U.S. Department of Justice

By:

Kelly A. Johnson  
Kelly A. Johnson  
Acting Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice

9.16.05

Date



The signatory identified below certifies that he is fully authorized to represent the Settling Parties that were signatories to the original Agreement in this matter; to agree to the terms and conditions of this Amendment No. 1 on behalf of those Settling Parties, and to bind those Settling Parties to all of the terms and conditions of this Amendment No. 1. Settling Parties to the original Agreement consent to enter into this Amendment No. 1 and to be bound by its terms. These Settling Parties agree that this Amendment No. 1 neither alters nor affects their substantive obligations under the original Agreement.

By:

  
\_\_\_\_\_  
William H. Hyatt, Jr., Esq.  
As Liaison Counsel

5/24/05  
Date

The signatory identified below certifies that he or she: is fully authorized to represent the Settling Party in this matter; has reviewed the original Agreement and is familiar with its terms and conditions; agrees to the terms and conditions of the original Agreement and Amendment No. 1 on behalf of the Settling Party; and binds Settling Party to all of the terms and conditions of the original Agreement and this Amendment No. 1.

Chevron Environmental Management Company,  
for itself and on behalf of Texaco Inc.

By:

  
Name

Gordon Turl

Chevron Environmental Management Company  
Superfund / Property Management  
Business Unit Manager

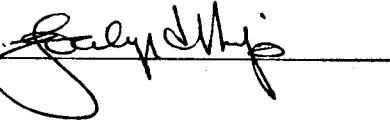
5/31/95  
Date

The signatory identified below certifies that he or she: is fully authorized to represent the Settling Party in this matter; has reviewed the original Agreement and is familiar with its terms and conditions; agrees to the terms and conditions of the original Agreement and Amendment No. 1 on behalf of the Settling Party; and binds Settling Party to all of the terms and conditions of the original Agreement and this Amendment No. 1.

Elan Chemical Company

By:

Name

A handwritten signature in dark ink, appearing to read "Galep" followed by a stylized flourish, is written over a horizontal line.

Date

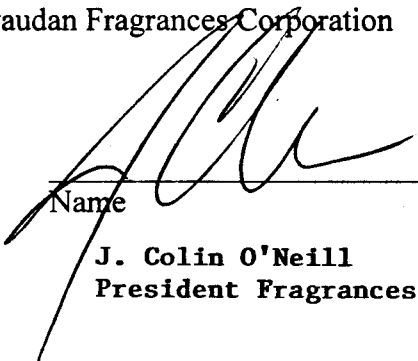
5/31/05

The signatory identified below certifies that he or she: is fully authorized to represent the Settling Party in this matter; has reviewed the original Agreement and is familiar with its terms and conditions; agrees to the terms and conditions of the original Agreement and Amendment No. 1 on behalf of the Settling Party; and binds Settling Party to all of the terms and conditions of the original Agreement and this Amendment No. 1.

Givaudan Fragrances Corporation

By:

Name

  
J. Colin O'Neill

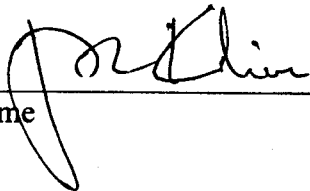
President Fragrances North America

5-12-05  
Date

The signatory identified below certifies that he or she: is fully authorized to represent the Settling Party in this matter; has reviewed the original Agreement and is familiar with its terms and conditions; agrees to the terms and conditions of the original Agreement and Amendment No. 1 on behalf of the Settling Party; and binds Settling Party to all of the terms and conditions of the original Agreement and this Amendment No. 1.

Pharmacia Corporation (f/k/a Monsanto Company) and Monsanto Company by Monsanto Company, for itself and as attorney-in-fact for Pharmacia Corporation

MMS  
By:

  
Name

6/29/05  
Date

The signatory identified below certifies that he or she: is fully authorized to represent the Settling Party in this matter; has reviewed the original Agreement and is familiar with its terms and conditions; agrees to the terms and conditions of the original Agreement and Amendment No. 1 on behalf of the Settling Party; and binds Settling Party to all of the terms and conditions of the original Agreement and this Amendment No. 1.

Purdue Pharma Technologies, Inc.

By:

James Stewart  
Name

Date

5/19/05

*Counsel and authorized  
signatory for Purdue  
Pharma Technologies, Inc.*

The signatory identified below certifies that he or she: is fully authorized to represent the Settling Party in this matter; has reviewed the original Agreement and is familiar with its terms and conditions; agrees to the terms and conditions of the original Agreement and Amendment No. 1 on behalf of the Settling Party; and binds Settling Party to all of the terms and conditions of the original Agreement and this Amendment No. 1.

Chemical Leaman Corp., including Quality Carriers Inc.  
and Quala Systems Inc.


By: Thomas J. Finkelman  
Name

5.24.05  
Date

The signatory identified below certifies that he or she: is fully authorized to represent the Settling Party in this matter; has reviewed the original Agreement and is familiar with its terms and conditions; agrees to the terms and conditions of the original Agreement and Amendment No. 1 on behalf of the Settling Party; and binds Settling Party to all of the terms and conditions of the original Agreement and this Amendment No. 1.

The Stanley Works

By:

  
Name THEODORE C. MORRIS  
ASSISTANT SECRETARY

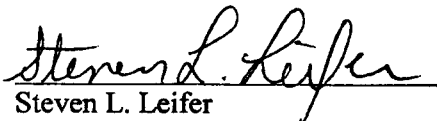
5/16/05  
Date



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Hexcel Corporation

By:



Steven L. Leifer

Baker Botts L.L.P.

The Warner

1299 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-2400

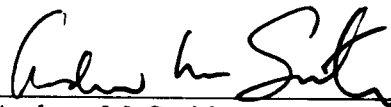
5/27/05

Date

The signatory identified below certifies that he or she: is fully authorized to represent the Settling Party in this matter; has reviewed the original Agreement and is familiar with its terms and conditions; agrees to the terms and conditions of the original Agreement and Amendment No. 1 on behalf of the Settling Party; and binds Settling Party to all of the terms and conditions of the original Agreement and this Amendment No. 1.

Leemilt's Petroleum, Inc. (successor to Power Test of New Jersey, Inc.)  
on its behalf and on behalf of Power Test Realty Company Limited  
Partnership and Getty Properties Corp., the General Partner of Power  
Test Realty Company Limited Partnership

By:



Andrew M. Smith

President of Leemilt's Petroleum, Inc.

AND Getty Properties Corp.

6.3.05

Date

The signatory identified below certifies that he or she: is fully authorized to represent the Settling Party in this matter; has reviewed the original Agreement and is familiar with its terms and conditions; agrees to the terms and conditions of the original Agreement and Amendment No. 1 on behalf of the Settling Party; and binds Settling Party to all of the terms and conditions of the original Agreement and this Amendment No. 1.

Vulcan Materials Company

By: William J. Benson  
Name

June 29, 2005

Date

The signatory identified below certifies that he or she: is fully authorized to represent the Settling Party in this matter; has reviewed the original Agreement and is familiar with its terms and conditions; agrees to the terms and conditions of the original Agreement and Amendment No. 1 on behalf of the Settling Party; and binds Settling Party to all of the terms and conditions of the original Agreement and this Amendment No. 1.

American Ref-Fuel Company of Essex County

By: Kirk J. Bily      July 25, 2005  
Name      Date  
Kirk J. Bily  
V.P. & Assoc. Gen'l Counsel

The signatory identified below certifies that he or she: is fully authorized to represent the Settling Party in this matter; has reviewed the original Agreement and is familiar with its terms and conditions; agrees to the terms and conditions of the original Agreement and Amendment No. 1 on behalf of the Settling Party; and binds Settling Party to all of the terms and conditions of the original Agreement and this Amendment No. 1.

DiLorenzo Properties Company on behalf of itself and the Goldman/Goldman/DiLorenzo Properties partnerships.

PHILLIPS NIZER LLP

By:

Martin B. Wasser  
Name MARTIN B. WASSER

July 25, 2005  
Date

COUNSEL FOR DILORENZO  
PROPERTIES COMPANY AND  
GOLDMAN/GOLDMAN/DILORENZO  
PROPERTIES PARTNERSHIPS